# Introduction

Following Covid-19 and its acceleration of changes in the behaviour of shoppers, for example, a greater uptake of online retail; vacancy is an issue felt on many High Streets. The prolonged vacancy of shops and buildings is a blight on our high streets. Data from the Local Data Company found that nationally, in the first quarter of 2023, one in every seven high-street shops were closed. Furthermore, in 2021 figures from Whythawk, the open data specialists, suggested that over eight in ten of these vacant properties have been empty for more than two years, and over one in five have been empty for more than four years.

High vacancy rates significantly impact a place’s economic performance by reducing footfall. Areas of high vacancy such as Manchester and Luton often have higher unemployment rates and suffer from clusters of boarded-up empty and vandalised shops, with upturns in anti-social behaviour in some cases creating ‘no-go’ areas. Many residents might relocate, whilst those remaining generally have less pride in their local high street or community.

Whilst government has taken successful action reducing vacancy during the last 18 months through policies such as the introduction of Use Class E or retail business rates relief, which enable more flexible use of existing buildings and make accessing them affordable, vacancy remains high in many areas. High vacancy rates significantly impact a place’s economic performance. They strip economic opportunity from towns and high streets. They directly and negatively affect footfall, risking businesses shutting down, more jobs being lost, people moving away from high streets, and lower economic activity in the heart of communities.

Tackling the problem of prolonged vacancy by regenerating our high streets and cracking down on this anti-social behaviour is therefore at the heart of the government’s levelling up agenda. We want to breathe new life into once-bustling town centres and transform them into vibrant places where people once again want to shop, live, work and relax – restoring local pride as we level up across the country.

In the [Build Back Better High Streets Strategy](https://www.gov.uk/government/publications/build-back-better-high-streets) published in July 2021 and the [Levelling Up White Paper](https://www.gov.uk/government/publications/levelling-up-the-united-kingdom) published in February 2022, we announced our intention to explore policy solutions that could address empty shops and offices and to give local authorities the power to tackle vacancy rates.

As part of the [Levelling Up and Regeneration Act,](https://bills.parliament.uk/bills/3155) which received Royal Assent on 26 October, the government is introducing High Street Rental Auctions; a new power for local authorities to require landlords to rent out persistently vacant commercial properties to new tenants such as local businesses or community groups.

High Street Rental Auctions are part of the government’s Anti-Social Behaviour Action Plan and backed by £2 million pounds of funding. They represent an addition to a range of tools local authorities might use when attempting to regenerate an area, and build on the government’s recent successful actions, such as the introduction of use class E, to enable more flexible use of existing buildings through its 2020 reforms. To promote and champion these new powers, the Department will work closely with up to eight local authorities known as Trailblazers, who will be early adopters, implementing the policy from commencement. The Trailblazers will provide strategic feedback throughout the HSRA process and will publicise their successes.

Whilst the framework of the High Street Rental Auction policy is set out in the Levelling Up and Regeneration Act, which is now law, many aspects will need to be defined by secondary legislation before local authorities can begin to use the power.

# Consultation exercise

In March 2023 the government launched a consultation aimed at informing the design of elements of the High Street Rental Auction policy which will be introduced via regulations. The consultation sought views on the distribution of costs, how the auction process will operate and marketing of the property, the minimum standard (and the requirement for works), the makeup of the standardised agreement for lease and lease, a potential exemption from Minimum Energy Efficiency Standards on commercial lettings and permitted development rights.

The Department for Levelling Up, Housing and Communities engaged with and actively encouraged responses from an extensive range of stakeholders including, but not limited to, landlords, lenders, prospective tenants (including community groups), local authorities and the public. As the consultation was complex and technical in nature, and the answers to many questions interrelated, respondents were required to complete the majority of questions, with some questions either optional or only presented on the basis of an earlier response. Respondents were required to submit their response online via a government-approved consultation platform. Where comments have been received by email these have been considered as supplementary information.

The consultation ran for 14 weeks from 31 March 2023 to 07 July 2023 and received 124 responses. These have helped the Department for Levelling Up, Housing and Communities to consider the design of the policy and associated statutory instruments which are anticipated to be introduced in mid-2024. A proportionate Impact Assessment, Public Sector Equality Duty Assessment and Environmental Principles Assessment have been undertaken and considered within the policy decisions set out in this response.

Below is a summary of submitted responses to each issue covered by the consultation, alongside a government response. All responses have been analysed by qualified personnel in line with government standards. A collated summary of the government next steps can be found at the end of this response.

# Consideration of Responses

Current Non-Domestic PRS Regulations

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| Consultation Question(s) | Responses |
| Level of guidance and prescription of process questions1. **On a scale of 1 to 10, how prescriptive should the legislation and guidance be for the auction process overall?** [sliding scale 1-10]1 = not very prescriptive, only mandatory elements should be set out in guidance10 = very prescriptive. All aspects of the process should be set out in step-by-step guides for local authorities and other parties to follow. | 124 |

**Summary of responses**

The responses received indicate a preference for detailed guidance. The average (mean) response score was 7.95, with all groups of respondents except for landlords having an average score above 7.

Landlords were divided, with 45% indicating a preference for the least prescriptive guidance and 27% indicating a preference for the most prescriptive guidance. Other landlords who did not select the most or least prescriptive guidance generally favoured a prescriptive level of guidance.

Government response

Guidance will be essential to ensure that local authorities, or agents acting on behalf of a local authority, understand how to operate the policy. Tenants will also need guidance so that they can understand how to bid, and landlords will use guidance to understand how they can engage and ensure their views are considered and reflected throughout each auction.

Given the overall majority preference for more detailed guidance and given that all parties aside from landlords opted for detailed guidance, the government proposes to publish detailed guidance ahead of High Street Rental Auctions becoming operational (statutory instruments coming in to force).

Officials will continue to engage with affected stakeholders to ensure the guidance meets their needs.

Auction Packs

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| --- | --- |
| Consultation Question(s)  | Responses |
| **2. Will it be possible to provide this type of information for the auction pack within the timing window (minimum of 3-4 weeks) for the auction process?** | 124 |
| **3. From the above list of items to be included in the pack, are there any items that could be removed? [Multiple choice]** | 124 |
| **4. Is there anything missing from the auction packs, which you think bidders would want to see? If so, please explain what is missing and why it should be included. [Free text box]** | 89 |

**Summary of responses**

Respondents were presented with a list of items proposed for inclusion in the auction pack.

Aside from landlords, investors and property agents there was minimal opposition to all the items being included in the pack, however local authorities showed a small consistent opposition to each individual item.

Landlords, investors and property agents are more opposed to local authority searches, flood risk, and test certificates, with more than half of landlords against the inclusion of these items.

There were a number of calls for additional items to be included in the packs. The most common of these were:

* Business improvement district levy
* Previous rental charge or likely charge if advertised/when advertised, length vacant, guide price
* Report on condition of property (schedule of condition);
* Listed building status
* Asset of community value status
* Service charge/estate charges accounts where applicable
* Current use class
* Evidence that any superior landlord or funder has been notified of the process

Despite the calls for the pack to be expanded beyond its proposed composition, responses to whether the timing window was sufficient presented a mixed picture. Most potential tenants were optimistic, with four out of five expressing confidence in the window; however, local authority officers demonstrated significant reservations, with a combined total of 91% either uncertain or believing provision within the window was unfeasible. Landlords, investors, property agents and other respondents not noted above were divided on this matter.

Government also recorded concerns from respondents around the practicality of securing documents where landlords were disengaged and regarding a lack of resource available to local authorities.

Government response

Government recognises the resource constraints faced by local authorities and in its policy design has considered how the burden on local authorities can be reduced (see: Streamlining the Process, p.12). As such, local authorities will be able to outsource all or part of the auction and marketing process to commercial agents, including the creation and distribution of the auction pack.

Government also recognises concerns that the window for provision of the pack may be too short. The overall period of the process is defined in primary legislation, and a balance must be made between the time available for auction and marketing. Recognising that marketing is important for securing as many bids as possible, government will advise in guidance that local authorities should begin auction pack preparation as early as possible following the service of notices. However, although the government considers these cases likely to be few and far between, local authorities should be aware that the cost of preparing an auction pack may not be needed if the auction does not proceed for any reason (such as a tenant being found by the landlord or following a successful appeal). As such, the final decision on when to begin preparing the auction packs will rest with the local authority.

Noting the opposition to local authority searches, flood risk, and test certificates from landlords, government has decided not to remove any items from the pack. There is a clear rationale for these items to be included to ensure that prospective tenants have the information required to pitch a considered and reasoned bid, and, more broadly, 79% of respondents felt they should be included. The government does not believe that the inclusion of these items will disproportionately impact landlords. As set out in the consultation, some items (as listed in the consultation document) will only be required to be included within the pack where available to the local authority.

Government has also considered the additional items for inclusion in the pack suggested by respondents and will add Business Improvement District (BID) levy and asset of community value status to the pack. The rationale for the inclusion or non-inclusion of each item is set out below:

* BID levy - as this is a payment that the tenant may be liable to pay when they occupy the premises, government considers this information important to allow a tenant to pitch a bid at a successful but profitable level.
* Previous rental charge or likely charge if/when advertised, length vacant, guide price - government has decided not to require a guide or reserve price (see: Reserve Price, p.9) in order not to deter bids and to allow the auction process to determine a fair ‘market’ rent. Given this item is close to a guide price, government has decided not to include this in the pack. In making this decision government acknowledged this may lead to a lower rent for the landlord. The landlord will have had opportunity to market the property prior to the auction and can generate interest to attract auction bids should they wish. They will also have choice over the compliant bids received. Government has also attempted to reduce costs to the landlord wherever possible.
* Report on condition of property (schedule of condition) - this item would be beneficial as part of the tenant's due diligence when preparing their bid. As the local authority will be undertaking a survey in order to ascertain the works required (if any) for the property to comply with the minimum standard, this item will be included within the pack.
* Listed building status - government will not specifically list this document, as if the property has listed building status this will be revealed as part of the local authority searches (and potential tenants will therefore already have access to this information in the legal pack).
* Asset of community value status - government will include this information in the pack. Local authorities will collect this information as part of their local land charges search; as such this should offer value to potential bidders without unduly increasing burdens on the local authority.
* Service charge/estate charge accounts where applicable - government will not specifically list these accounts, as they will be revealed as part of the replies to enquires (and potential tenants will therefore already have access to this information in the legal pack).
* Current use class - government will not include this in the pack as the local authority will set the permitted uses for which bids can be received, making the existing use inconsequential.
* Evidence that any superior landlord or funder has been notified of the process - notification to superior landlord and lenders is already a mandatory part of the primary legislation; potential tenants can therefore be assured this has already happened. Government will make this point clear in guidance, so this item is not included in the pack.

Marketing Process

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| Consultation Question(s)  | Responses |
| 5. **Please use the grid below to** **indicate which of the following marketing strategies should be:*** **Mandatory (should be specified in the regulations)**
* **Recommended or optional (for use in the non-statutory guidance)**

[Drop down menu options: ‘Mandatory,’ ‘Recommended/ optional,’ ‘Don’t know’]* Advertise the property on the internet (but not mandated on specific websites)
* Name specific websites to advertise the property on (e.g., Rightmove)
* Local authority to list all potential High Street Rental Auction properties on their website (any property that has been served an initial notice)
* Promote the property using social media
* List the property in local newspapers
* Minimum length of time the property should be marketed for
* Targeted marketing using local business and organisation membership groups (e.g., Business Improvement Districts)
* An offer for potential bidders to view the property
* Professional photos of the property
* A floor plan
* A ‘to let’ board outside the property
 | 124 |
| 6. **What should be the minimum marketing period for each High Street Rental Auction property?** [Single choice]* Less than 2 weeks
* 2-4 weeks
* More than 4 weeks
* Don’t know / don’t have a preference
* Other (please specify) [free text box]
 | 124 |

**Summary of responses**

Most groups responding to the consultation predominantly thought that advertising on specific websites and local authorities listing High Street Rental Auction properties on their website should be mandatory.

Officers of local authorities indicated a preference for social media promotion and listing the property in local newspapers to be recommended or optional rather than mandatory.

Landlords, investors and commercial agents showed a considerable preference for the properties to have professional photos, a floor plan, and a "to let" board, either mandatorily or recommended.

Overall, the most endorsed marketing strategies were advertising on specific websites, local authorities listing properties, and the use of professional photos.

There was a consensus across respondents of all sectors that the minimum marketing period should be longer than four weeks, with 66% of total respondents choosing this option and little deviation between differing stakeholder groups.

 Government response

Government recognises that marketing will be essential to ensuring that bids are received. A higher number of bids is likely to benefit landlords and local authorities by offering greater choice and diversity. Taking into account the view of respondents that a marketing period greater than four weeks is required, government will recommend a minimum marketing period of six weeks and mandate that the marketing period is at least five weeks. As there may be times when local authorities are not reasonably able to begin marketing at week four of the auction process, this ensures that there is some degree of flexibility for the local authority and that they are not operating outside of the law if commencing marketing slightly late. Local authorities or those acting on behalf of a local authority will also be able to market the property for longer than six weeks by marketing between service of the final notice and the mandatory requirement to do so. The government will set out best practice in the detailed guidance to be produced.

In regard to pack composition, the government has considered the representations of all stakeholders and the impacts of inclusion or non-inclusion of each item. Where possible, the government has attempted to build the pack in line with the general consensus.

The government notes landlords’ preference for the inclusion of professional photos, a floor plan and a ‘to let’ board. The government will encourage the inclusion of all of these items however, only photos of the premises will be mandated. A ‘to let’ board cannot be mandated as local authorities will require the landlord’s consent, as such, it will be encouraged in the guidance. As a floor plan and professional photos of the property will be expensive for the local authority, the government has opted to omit these from the mandatory list and instead require that the floor area of the property (amount of commercial space of property) is listed. Photos will be expected to be of a clear and reasonable quality and a local authority will still be able to include professional photos, a floor plan, or both, where available without additional cost.

Given local authorities’ views that social media promotion and listing the property in local newspapers should be recommended rather than mandatory, and given that no strong opposition was received, these items will not be mandatory.

Although there was overall support for access for potential bidders to view the property, government considers that making this action mandatory for local authorities may be particularly onerous and significantly add to the burden placed upon them. Government will, via guidance, encourage local authorities to provide access where they, or an outsourced party, are able to do so, though this action will not be mandatory.

To summarise, the following will be compulsory to either follow (where an action for the local authority, i.e. advertising strategy) or include in the marketing pack and will be set out in the regulations:

* Properties subject to High Street Rental Auction are listed on the relevant local authority’s website (properties subject to initial notice only will not be required to be listed).
* Advertising on the internet, including at least one of the major commercial property websites (which the government will list examples of in the guidance).
* Photos of property.
* Floor area (amount of commercial space of property).

The following items will not be mandatory to include as a strategy or in the marketing pack but will instead be optional and set out in the guidance document. Local authorities will be able to choose what is appropriate for them to include:

* Access for potential bidders to view the property (where possible).
* Listing in local newspapers.
* Floor plan of the property.
* Promotion of the property on social media.
* Advertising by local business groups.
* A ‘to let’ board (outside the property).

Reserve Price

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| Consultation Question(s) | Responses |
| 7. **Should there be a reserve price for properties that are subject to a High Street Rental Auction?** [Single choice]* Yes
* No
* Depends on the property
* Don’t know
 | 124 |
| 8. **If a reserve price was used, how should the reserve be set?** [Single choice]* Based on external valuation advice
* Local authority discretion
* Formula-based approach
* Other (Please specify) [Free text box]
* Don’t know / don’t have a preference
 | 124 |

**Summary of responses**

Respondents had mixed views on whether there should be a reserve price, however 40% of respondents felt that there should be no reserve set.

Landlords generally felt there should be a reserve price whilst local authorities were divided. Many local authorities felt that it would depend on the type of property whether a reserve price should be used.

If a reserve price was to be set, landlords felt an external valuation should be used whilst local authorities were divided between a valuation and use of their own discretion.

**Government response**

Government acknowledges landlords’ and other stakeholders’ concerns that lack of a reserve price could lead to low rents being accepted, however the policy has been designed to encourage a range of bids with the winning bid representing the fair market price.

A reserve price, especially if set too high, could undermine the policy by discouraging bids after the local authority has committed time and expenditure, potentially on a valuation itself. In some instances, where set at a level which makes the premises unviable for prospective tenants, a reserve price could lead to no valid bids being made and the premises remaining empty.

By contrast an auction with no reserve price encourages bidders to compete against each other with the nature of this competition naturally driving the price up until it reaches the level that the market is willing to pay – the fair market price.

Aside from a potential reserve price a series of measures have been built into the policy to limit the impact upon landlords; a landlord will already have had over a year (across a two-year period) in which the property has been vacant, and a lease could have been agreed. The government have also provided for a further grace period ahead of the auction. The lease is a temporary measure limited to 5 years and the landlord will have choice over the bids received. Guidance will encourage local authorities to talk to pro-active landlords in the first instance and use the policy where landlords are not taking sufficient steps to secure a letting.

Government has carefully considered the mixed views of stakeholders against the aims and design of the policy. Given the safeguards offered elsewhere and given that a reserve price could undermine the policy, no reserve price will be set for High Street Rental Auctions.

Proposed Auction Option

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| Consultation Question(s) | Responses |
| 9. **Do you agree that the proposed sealed-bid auction process outlined in Annex C should be used as the auction process for High Street Rental Auctions?*** Yes
* No
* Don’t know / no preference
 | 124 |
| 10. **[If no] How do you propose the auction process should run? [Free text box]** | 49 |

**Summary of responses**

Government proposed the use of the sealed-bid auction process as outlined in Annex C of the consultation document. A sealed bid process is where bidders submit a bid which is not disclosed to other parties (hence ‘sealed’) in which they state the rent they are willing to pay for the lease of the property. Bidders will also be guided to submit a brief overview of what they intend to use the property for, as well as evidence that they could fulfil the obligations of the tenancy (financial documentation). Once the bidding window closes, the landlord is sent the bids for consideration and selects the winning bid.

Responses showcased a range of views among various stakeholders. Most local authority officers agreed with the proposed method. The landlord, investor, and property agent groups were more divided but showed a slight preference for the proposal. Potential tenants were split on the topic, with an equal number for and against.

Respondents who disagreed with the sealed-bid process offered little alternative to the proposal despite potential alternatives being explained and offered within the consultation document. Many landlords in disagreement stated they had no aversion to the proposal in particular but rather the policy, whilst several local authorities felt they should have free choice over the winning bid.

**Government response**

As outlined in the consultation, as compared to other auction processes a sealed bid process has benefits for High Street Rental Auctions: it gives the landlord more control by allowing them to select the winning bid; it increases potential demand by not requiring pre-registration checks and other criteria prior to bidding; and landlords can carry out a holistic assessment of all bids in the round.

A number of the responses received indicate a general disagreement with the policy but unfortunately offer no preferable alternative or a rationale as to how a more acceptable auction policy could be developed. The government has therefore assumed that these respondents do not have a preference for the alternatives given in the consultation. Moreover, respondents generally supported the proposed sealed-bid process. On this basis, the government has decided that the sealed-bid auction process outlined at Annex C of the consultation document will be the process used for High Street Rental Auctions.

## Streamlining the Process

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| --- | --- |
| Consultation Question(s) | Responses |
| 11. [Local authorities only] **Do you consider the process as it currently stands as too burdensome for local authorities?*** Yes
* No
* Don’t know
 | 64  |
| 12. **Are there any ways in which the process might be streamlined or simplified (especially for local authorities)? If so, please specify.** [Free text box] | 124 |

**Summary of responses**

74% of local authorities responding to the consultation felt that the process was too burdensome.

When asked whether the process could be streamlined or simplified further, some local authorities thought that standardised templates could streamline the process, in particular for the auction pack, application forms and marketing. Local authorities also raised several concerns that the process could be time consuming and costly, particularly where there is a lack of support from central government. Local authorities also raised that tracking absentee landlords could be an issue.

Whilst the question was aimed at local authorities, some respondents from other sectors completed the question, noting that outsourcing to commercial agents could relieve the administrative burden.

**Government response**

The government are aware of the difficulties that local authorities may face in administering the process. The following section deals with outsourcing of the auction process. Government will allow local authorities to outsource all, or part of the auction process to commercial property agents, which may help local authorities with the capacity concerns raised. As aforementioned, the government will also look to produce a detailed and comprehensive guidance document which explains the auction process and how this process can be outsourced. The government will provide templates for forms and notices (for use by the local authority) either within the guidance or within the regulations where provision is possible.

Outsourcing Options

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| Consultation Question(s) | Responses |
| 13. **Do you agree the local authority should have a choice whether to outsource the process?*** Yes
* No
* Don’t know / don’t have a preference
 | 124 |

**Summary of responses**

In general, all categories of respondent aside from those representing the pub industry supported permitting local authorities to outsource the process. 94% of local authorities responding supported outsourcing.

**Government response**

Local authorities should feel empowered to use High Street Rental Auctions where there is a clear issue of long-term vacancy. Noting concerns expressed above that the High Street Rental Auction process is burdensome for local authorities, local authorities will be permitted to outsource all, or part of the process. This supports local authorities to implement this new power in a way that best suits them and their local area in line with the capacity and expertise available to them.

High Street Rental Auction Costs

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| Consultation Question(s) | Responses |
| 14. **Who should pay the costs associated with the following?*** Surveying the property
* Marketing
* Running the auction
* Solicitor’s fees (incurred by a local authority) for preparing the auction pack and preparing the legal agreements and completing these with the successful bidder
* Searches and surveys to be included in the auction pack
 | 93 |

**Summary of Responses**

The consultation sought views on five separate costs. Landlords often favoured costs being paid by local authorities whilst local authorities felt landlords should pay.

There were some differences between voting patterns for each cost. For instance, the question on who should pay for running the auction had the largest majority stating that it should be the local authority, at just over half of all responses and twice the amount that voted for the landlord (25%). Conversely, the vote on who should pay for searches and surveys included in the auction pack was much closer, receiving 41% for the local authority and 34% for the landlord.

**The Government Response**

The government recognises the importance of costs being shared in a fair and proportionate way to limit additional costs to taxpayers, whilst ensuring the policy is proportionate in terms of its impact on landlords. It must also be effective in encouraging bids from tenants.

The government has sought to balance costs in the most fair and proportionate way possible. Whilst respondents did not in general recommend that costs should sit with tenants, government continues to believe that tenants are uniquely placed as the only party who can offset the costs placed upon them by factoring the costs into the price that they are prepared to pay in rent. Placing too many costs on the tenant however would likely deter bids by increasing the amount of start-up funding required and the overall cost of acquiring and operating a property through a High Street Rental Auction.

Landlords will face costs for bringing the property up to the minimum standard and may receive rents lower than they would ordinarily seek.

Local authorities will benefit from a successful and vibrant high street through business rates revenue, as more premises are trading, and may otherwise have used different high street interventions with their own associated costs, they will also be making a choice to undertake a High Street Rental Auction where undertaken.

It is also commonplace for some costs, such as surveys and searches, to be incurred by a tenant when taking on a lease in ordinary leasing negotiations outside of a High Street Rental Auction.

The government has therefore determined that:

* Costs relating to the marketing of the properties and auction fees will be borne by the local authority.
* Costs relating to searches and surveys, as well as solicitors fees paid by the local authority for lease preparation will be borne by the tenant.

Due to the position of the local authority in administering this power, we envisage they will need to pay all costs (as listed in this question) up front, with costs borne by the tenant being recovered during the process.

Government will also be providing funding of £2 million which can be accessed by local authorities to cover costs incurred under the High Street Rental Auction policy.

The Minimum Standard

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| Consultation Question(s) | Responses |
| 15. **The standard proposed is sufficient to take the property to auction and encourage bids from prospective tenants. Do you agree?*** Scale from Strongly agree to Strongly disagree
 | 124 |
| 16. **The list of works strikes a fair balance between what a landlord is expected to do to take the property to auction and encourage bids from prospective tenants, and what the tenant will need to do thereafter by way of fit out. Do you agree?*** Yes, it strikes a fair balance
* No, the burden on the landlord should be reduced
* No, it won’t go far enough to encourage bids
 | 124 |

**Summary of Responses**

In this section the government proposed that the landlord should conduct works on the property to bring it up to a condition which is safe, stable and secure for the tenant, and where occupational risks are either removed or managed. The consultation sought views on the degree to which the above standard and any resulting works were a) sufficient to take the property to auction and encourage bids from prospective tenants, and b) fair and proportionate to apply.

This section was divided into two questions, with answers given on a scale from ‘strongly agree’ to ‘strongly disagree’, with ‘neither agree nor disagree’ in the middle of the range.

There was strong support for the proposed standard being sufficient to take the property to auction and encourage bids from prospective tenants, with most respondents answering either ‘agree’ or ‘strongly agree’. All categories of respondent supported the standard though there was less support overall from landlords and officers of a local authority.

For the second question ‘The list of works strikes a fair balance between what a landlord is expected to do to take the property to auction and encourage bids from prospective tenants, and what the tenant will need to do thereafter by way of fit out.’ a clear majority of respondents thought that it struck a good balance (69%). It was, however, noted that most landlords felt the burden on them should be reduced.

**Government Response**

In designing the minimum standard, government has attempted to balance the need for properties that are subject to auction to be safe and capable of trading, with the need to minimise the cost and burden upon the landlord.

The government recognises that landlords would like the burden to be further reduced, however to do so may compromise the safety of the premises or undermine the policy by creating additional costs for the tenant.

Whilst we have given due consideration to potential changes that could be made to the standard, the consultation showed that the vast majority of non-landlord respondents supported the standard in its current form. The government therefore proposes to use the standard proposed within High Street Rental Auctions.

Remedies

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| Consultation Question(s) | Responses |
| 17. **Do you agree with the proposed remedies to be included in the agreement for lease?** [Multiple choice]* Yes
* Yes, with the addition of liquidated damages being paid by the landlord in the event of delay
* No
 | **124** |
| 18. [if no] **Which remedies do you think should be included in the agreement for lease?** [Multiple choice]* If other/none of the above, please provide your reasoning [Free text box]
 | **50** |

**Summary of Responses**

Government put forward three remedies which could be used by tenants in instances where a landlord failed to undertake works to comply with the minimum standard. Respondents were able to agree with the proposed remedies, disagree, or state that they would agree subject to the addition of liquidated damages.

Using question 18, several respondents indicated they did not wish to take a position on remedies, despite having selected yes or no within question 17. We have therefore considered the data as if these respondents had indicated a further category of ‘don’t know’.

Generally, all respondents supported the proposed remedies. However, all groups excluding landlords, investors and property agents were approximately evenly split on whether the remedies should stand as proposed or whether liquidated damages should also be included. Landlords, investors and property agents did not generally support the addition of liquidated damages.

When asked for reasoning, those respondents who felt that the remedies were not sufficient bemoaned the general concept of government interfering in landlords’ rights to property. They felt that government should bear any costs, including works to property.

**Government Response**

The government has carefully considered our approach to this issue and understand that it is a sensitive component of the policy for some stakeholders.

The three remedies proposed are more common amongst leasing arrangements whilst liquidated damages could be considered more prevalent in other types of contracts, such as development contracts.

Whilst mindful of the need to attempt to keep leasing arrangements as closely aligned to those commonly used in the market as possible, the situation in High Street Rental Auctions where landlords’ works happen after the property has been marketed rather than before is itself uncommon. Given the power is likely to be used when landlords are not actively engaged, the government considers it a realistic possibility that a small number of landlords may look to frustrate the process.

The consultation responses indicate a clear strength of feeling amongst a significant number of stakeholders that liquidated damages should be included in addition to the three remedies proposed. This would prevent non-compliant landlords form frustrating the policy by refusing to undertake the required works.

The government recognises that landlords, property agents and investors are against the inclusion of liquidated damages. Many landlords will be actively attempting to undertake works and it would be unfair for them to be penalised in the event of delays outside of their control. Given concerns raised elsewhere in this document regarding burdens upon the local authority, government notes that attempts to quantify losses on a case-by-case basis for the purpose of liquidated damages may be challenging.

Although liquidated damages are an important protection for tenants where a landlord seeks to frustrate the process, the government does not wish to see landlords unfairly penalised or to add further complexity to the process.

The government has therefore determined that, in addition to the proposed remedies, local authorities will have the option to include liquidated damages subject to their consideration of the landlords representations. Liquidated damages will be set at a fair and consistent rate that is applied to all High Street Rental Auction leases and is a rate that any tenant could reasonably be expected to earn. In considering what a tenant could reasonably be expected to earn, we have used the minimum wage to represent an amount which the vast majority of most trading premises would realistically be likely to earn in profit. Safeguards will be included within the clause to ensure proactive landlords are not unfairly penalised owing to events outside of their control. The fee for liquidated damages will be set at £55 per day.

Subletting

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| --- | --- |
| Consultation Question(s) | Responses |
| 19. **Should tenants be able to sublet their tenancy?** [Single choice]* Yes, either in whole or in part without landlord’s consent.
* Yes, either in whole or in part provided in both cases it is with landlord’s consent (not to be unreasonably withheld or delayed)
* Yes, but only in whole with landlord’s consent (not to be unreasonably withheld or delayed)
* No, except where the government is dealing with larger premises such as a department store where multiple occupancy is likely, and then only with landlord’s consent (not to be unreasonably withheld or delayed)
* No, not at all
* Don’t know / don’t have a preference
 | **124** |

**Summary of Responses**

Respondents were relatively even in disagreement over whether tenants should be able to sublet the property. Landlords, investors and property agents did not generally support subletting of any kind, whilst local authorities, tenants and other respondents were more evenly split, with a slight preference for subletting but usually with the landlords' consent.

**Government Response**

High Street Rental Auctions are an important tool to rejuvenate High Streets and the government is keen to ensure that properties subject to a High Street Rental Auction remain commercially active. This is particularly true in left behind places or those that have significant instances of vacancy. Whilst subletting is normal practice in the leasing of properties, the government recognises concerns that permitting a tenant to sublet a property which has had a High Street Rental Auction applied to it could lead to these properties being sublet at a profit which is inconsistent with the policy’s intentions to promote occupancy and beneficial commercial activity taking place in our communities whilst remaining proportionate to the rights of the landlord.

There are, however, instances where tenants’ businesses are unsuccessful in particular locations where they might normally seek to sublet the property to move to a new location or to trade in another way. Whilst subletting will not be permitted, the government will allow assignment of the lease, subject to a landlord’s consent (not to be unreasonably withheld or delayed), so that tenants can pass on their lease on the same terms to new tenants. This allows the tenant to leave the premises where required and for the property to remain active whilst ensuring there is no significant adverse impact on the landlord.

Subdividing

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| --- | --- |
| Consultation Question(s) | Responses |
| 20. **A local authority should be able to divide larger premises up and auction off separate sections. Do you agree?*** Scale from Strongly agree to strongly disagree
* Please provide your reasoning [Free-text box]
 | **124** |

**Summary of Reponses**

A range of views were provided on whether to permit subdividing of larger premises. There was no overall majority, with the largest proportion of responses strongly disagreeing with subdividing. However, when combined, the votes for ‘disagree’ and ‘strongly disagree’ and the votes for ‘agree and strongly agree’ were close, with 39% and 42% respectively.

**Government Response**

The government recognises that large empty premises such as former British Home Stores and Debenhams are a blight on the high street and it is important that, whilst directive action is needed to bring these units back into use, there is careful consideration as to how this is done effectively.

Whilst the government is eager to bring premises of this type back into meaningful use, the government also recognises that there are many factors to consider owing to the complex nature of bringing forward large units which are occupied by multiple businesses. In the consultation responses received there was no clear majority to support subdividing larger units to create smaller premises to put to auction.

Due to its complexity, subdivision, if brought forward within the policy would require a detailed and considered approach as there are number of potential pitfalls. For example, it could be highly complex, costly, and burdensome for local authorities to execute. Furthermore, it may require additional local authority and landlord resource to facilitate subdivided units and it may also be difficult to apportion the costs and obligations associated with managing the individual units.

Having taken in to account the opposing opinions supplied by respondents to the consultation and having considered the complexity and risk of subdivision as a potential option, government has determined that the practical implications to delivery outweigh any potential benefit of subdivision in the short term. Subdivision will be excluded from High Street Rental Auctions at this juncture. Government will continue to consider subdivision under High Street Rental Auctions in slower time alongside other options to bring large empty premises back in to use and does not rule out bringing forward subdivision under High Street Rental Auctions at a future date once the issue has been given due consideration.

Alterations and Fit Out

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| --- | --- |
| Consultation Question(s) | Responses |
| 21. **Do you agree with the proposal?*** Yes
* No
* (Optional) Please explain your answer [Free-text box]
 | **124** |
| 22. **In carrying out their fit out works, should the tenant be able to do works to, or which affect, the external parts (including shop front), or structural elements of the building?*** Yes – with the landlord’s consent (not to be unreasonably withheld or delayed)
* No
* Don’t know/no preference
 | **124** |
| 23. **Do you think the tenant should have a rent-free period for carrying out its fit out works?*** Yes – but only for 2 weeks
* Yes – for 2-4 weeks
* Yes – for 4 + weeks
* No
 | **124** |

**Summary of Responses**

The government proposed that tenants can undertake certain fit out to meet the needs of their particular use without the landlord’s consent. These works include erecting internal counters, shelving, partitioning, display cases and other shop fittings and ancillary equipment (subject to removal by the tenant at the end of the term). Any other alterations by the tenant, including signage, would require a landlord’s consent (although that consent must not be unreasonably withheld or delayed).

The vast majority of respondents agreed with these proposals. Landlords were the group with the biggest deviation; however, they also supported the proposal by a significant margin.

The government also asked whether the tenant should be able to undertake works to external parts of the building, or structural elements of the building. A majority of consultees responded ‘Yes – with the landlord’s consent (not to be unreasonably withheld or delayed)’. Around three quarters of landlords disagreed with this approach, stating that tenants should not be able to make external or structural changes.

The government asked for views on whether the tenant should have a rent-free period when carrying out its fit out works. Four out of five respondents agreed the tenant should have a rent-free period. Those who did not agree were predominantly landlords and property agents.

Of those who agreed there should be a rent free fit-out period, most indicated that the period should be between two and four weeks. Other respondents opinions varied, with a slight inclination towards longer rent-free durations (of a greater duration than 4 weeks).

Government Response

This policy is aimed at bringing life back into units which are vacant. To fulfil this aim, it is important that the tenant is able to carry out works that enable it to function and trade in a manner which gives it the greatest chance of being successful.

Given that a majority of respondents were clearly supportive of allowing the tenant to conduct internal non-structural works, it is the government’s view that the tenant should be allowed to undertake such fit out for their particular use without the landlord’s consent. Such fit-out includes erecting internal counters, shelving, partitioning, display cases, and other shop fittings and ancillary equipment (subject to removal by the tenant at the end of the term).

The government has considered landlords’ opposition to fit out works to external parts or structural elements of the building being made without consent. The government acknowledges that any changes to structural parts of the building could have an adverse impact on the integrity of the building or the property value. On this basis, it is the government’s view that such external or structural works must be subject to the landlord’s consent (not to be unreasonably withheld or delayed). This approach seeks to balance the landlord's interest with the aims of the policy and is largely consistent with responses from all parties.

In considering the rent-free period, the government has considered potential impacts whereby a longer period may have financial implications for the landlord. On balance, a shorter period may impose financial pressure on tenants who need access to a greater amount of startup funding. This is likely to affect community groups or those who are not yet trading and, as a result, may deter some groups of potential tenants from bidding at auction. Having considered the issues set out above, our approach attempts to find a proportionate balance, taking into account the preferences of consultation respondents. A rent-free period to account for the time these works are conducted will be included and will four weeks long.

Definition of Premises

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| --- | --- |
| Consultation Question(s) | Responses |
| 24. **Where the property is the whole of a building, we propose to use a simple red line plan with a general description in words to define the tenant’s demise. Do you agree with this proposal?*** Yes
* No
* [If no] (Optional) Please explain your answer [Free-text box]
 | **124** |
| 25. **Where the property forms part of a building, we propose that the tenant’s demise will be of an interior demise only, with external and structural parts being retained by the landlord. Do you agree with this proposal?*** Yes
* Yes – but in appropriate cases parts of shop fronts (including glazing, frames, and entrance doors) should be demised to the tenant
* No
* [If no] (Optional) Please explain your answer
 | **124** |
| 26. [If B yes] **Where external and structural parts are retained by the landlord, we consider there may be need for the tenant to be granted additional rights which allow it to attach into such retained parts for the purpose of its fit out – do you agree the tenant should be given these rights?*** Yes
* Yes – with landlord’s consent (not to be unreasonably withheld or delayed)
* No
* [If no] (Optional) Please explain your answer [Free-text box]
 | **117** |

**Summary of Responses**

A vast majority of respondents agreed with the proposal to use a simple red line plan to demarcate the premises. Whilst there was general support from landlords, this was the group with the most deviation, with several stating the need for the definition to be clear to avoid risk to the tenant, particularly where shared access exists.

Most respondents also agreed that the tenant's demise should be the interior of the building only, with structural parts retained by the landlord, where their property forms part of a larger building, many respondents, particularly landlords, thought that this should extend to shop fronts (including glazing, frames, and entrance doors) in appropriate cases.

## In the instance that external and structural parts are retained by the landlord, many respondents thought additional rights shouldbe granted to the tenant to allow it to attach into such parts for the purpose of its fit out, with the landlord's consent.

**Government Response**

Using a simple red line plan to define the premises subject to lease is a commonly used process that is easy to understand for all stakeholders and limits complexity for the local authority when drafting the lease.

The government acknowledges the concerns raised by some landlords around clarity and that not all properties are the same; however, given that the feedback in the consultation is very supportive of this proposal (even amongst landlords), where the property is the whole of a building, a simple red line plan will be used with an accompanying general description in words to define the tenant’s demise. The detailed guidance to be issued by government may help to address issues of clarity further.

Given the strong support shown in consultation responses, where the property forms part of a building, the tenant’s demise will be of an interior demise only, with external and structural parts being retained by the landlord. Shop fronts will also be demised as per consultation preferences. The tenant will be granted additional rights which allow it to attach into such retained parts for the purpose of its fit out.

Existing Fit Out

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| --- | --- |
| Consultation Question(s) | Responses |
| 27. **Do you agree with the proposal?*** Yes
* No,
* (Optional) Please explain your answer [Free-text box]
 | **124** |

**Summary of Responses**

We proposed that the incoming tenant should assess the nature, condition, and benefit of retaining any aspects of the existing fit out for their own use, taking on the cost of stripping out pre-existing fittings as part of their own fit out works where no use can be made.

With the exception of the hospitality sector, respondents generally agreed with the proposal. Of those disagreeing, there was general concern that the strip out of items from pubs may prevent premises which have been subject to a change of use reverting to pubs at a future date. Other stakeholders raised that the existing fit out, particularly where structural, may reduce value for the landlord, whilst some insisted that the proposal would lead to unfair costs being imposed on tenants and that properties should come as an empty shell.

**Government Response**

As some tenants looking to access this policy may have fewer available assets and less cashflow, this proposal aims to reduce the cost of fit out where possible. It is also worth considering that to ask the landlord to remove fit out would place further costs upon the landlord. The tenant will have seen photos of the property, may have inspected the property, and will know the terms of the lease before any bid.

Given extensive general support from respondents, the government has decided to proceed with the proposal that tenants will be able to remove or retain non-structural items; however, accounting for concerns around value loss, where tenants wish to remove a structural item, they must seek consent from the landlord (not to be unreasonably withheld or delayed).

There was notable concern that under this policy the unique fittings characteristic of pubs could be stripped out. If this were the case, there would be a genuine risk of losing premises as these fittings, such as cellar cooling equipment and beer lines, are integral to the operation of a venue as a functioning pub. This is especially true within the context of buildings which are historic or listed. Government has therefore decided to include further protections within leases of pubs (subject to High Street Rental Auction) that stipulate the removal of the dispense systems, bar, toilets, commercial kitchens or cellars will always be at the absolute discretion of the landlord. Where a local authority is able to agree removal of some of these unique fittings with a landlord as part of its assessment pre marketing, the lease can be changed so that these fittings can be removed with the landlords consent (not to be unreasonably withheld or delayed, i.e. a valid and compelling reason for refusal of consent must be provided by the landlord); this prevents a landlord changing their mind in a bid to undermine the process after a local authority has invested time and money.

### Rent Deposit

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| --- | --- |
| Consultation Question(s) | Responses |
| 28. **Do you agree with the proposal?*** Yes
* No
* Don’t know
* (Optional) Please explain your answer [Free-text box]
 | **124** |

**Summary or Responses**

The government set out that it will not require a tenant to provide a guarantor, but that the tenant will have to pay a deposit. The government proposed setting the deposit at three months’ rent, or £1,000 (whichever is the greater).

Most respondents supported the rent deposit proposal, although landlords, investors and property agents were divided and narrowly against the proposal. The prevailing sentiment from this group was a desire for greater security against potential tenant defaults or property damage. A few alternatives were proposed, such as monthly pre-paid rents without deposits, or ensuring local authorities provide a guarantee.

Other respondents who disagreed with the deposit felt it may deter bidders, in particular community groups. There were some suggestions to set a straightforward £1,000 deposit to encourage community groups.

**Government Response**

Consumers and residents want high streets to serve their needs with vibrant, varied and aesthetically pleasing offerings which include a mix of business and community initiatives. As set out in the consultation, government wishes to ensure that High Street Rental Auctions encourage a variety of organisations to bid (where consistent with the uses set by a local authority in each instance). This may include community groups or start-up businesses that may have been unable to access property at inflated rental rates.

The government recognises landlords’ concerns that they would, ordinarily, look for a larger deposit or a tenant with greater covenant strength. Equally, the government recognises that a deposit may deter some groups who wish to rent high-street property.

The government has considered the alternatives suggested; given that the deposit will be set at three months’ rent or £1,000 if this is a greater sum, pre-paid monthly rents would not be beneficial to landlords. Asking local authorities to provide a guarantee creates a conflict of interest and may deter them from using the process. Reducing the deposit amount to favour tenants would further deviate from the wishes of landlords.

The government considers that there is a balance to be found and it is likely that no party will be wholly content. The alternatives that were proposed have been considered and are less preferable. Therefore, given the views expressed and general support given, the government intends to continue with the proposed deposit of the greater of £1,000 or three months’ rent. The landlord will have final choice over the tenant from those who bid (and are eligible to do so) and can choose a tenant who they believe to have greater covenant strength if they desire.

Repairs and Decoration

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| --- | --- |
| Consultation Question(s) | Responses |
| 29. **We recommend that the tenant should be liable to pay for repairs to its demised premises, but only to the standard shown by a schedule of condition taken after the landlord has carried out any works to bring the property up to the minimum standard - do you agree?*** Scale from strongly agree to strongly disagree
* Please provide your reasoning [Free-text box]
 | **124** |

**Summary of Responses**

Respondents generally recognised the proposal to make the tenant liable for repairs only to the standard shown in a schedule of condition as balanced and fair between the landlord and the tenant. Only a small number of respondents disagreed with the proposal to make the tenant liable for repairs to the standard shown by a schedule of condition.

In the rationale provided, most respondents agreed that, as short-term occupants, tenants should not be responsible for rectifying long-standing issues with property.

**Government Response**

Alternatives to a schedule of condition, such as full insuring and repairing leases, exist in the leasehold market, although these place a much greater repair obligation on the tenant. Equally it would be possible for the landlord to be liable for repairs, but they may have already incurred costs for works to comply with the minimum standard and may have received a rent lower than they would ordinarily seek via the auction.

Tenants will not always be responsible for issues that occur within a premises; however, landlords should not be expected to pay for repairs in all instances, particularly when such repairs result from, or are exacerbated by, use of the premises.

Given that landlords will be required to carry out works to restore a property to a minimum standard, requiring tenants to carry out repairs only to the condition shown by a schedule of condition ensures that the works paid for by the landlord are properly maintained, whilst not requiring the tenant to pay for repairs relating to pre-existing issues. The government considers that this approach balances costs appropriately between landlord and tenant.

The government is pleased that most respondents agree with our assessment and will continue with this proposal within the High Street Rental Auction lease.

Service Charge

|  |  |
| --- | --- |
| Consultation Question(s) | Responses |
| 30. **Do you agree with this proposal?*** Yes
* No,
* (Optional) Please explain your answer
 | **124** |

**Summary of Responses**

In the consultation the government proposed that service charges will not be required unless the landlord opts for an alternative regime to be included in the lease.

The first alternative service charge regime is one that must be taken from the superior lease, where the landlord has a leasehold interest itself and pays service charges to its own landlord or, otherwise, match the existing regime where the unit is in a parade of shops with a common landlord.

Alternatively, the regime can take the form of a list of services from which the landlord can select and for which the tenant must pay. The government envisages that the landlord will have the opportunity to decide which services it is prepared to provide under the lease.

A significant majority within all groups of respondents agreed with this proposal. Although generally supportive, some local authorities expressed that it may be difficult to institute in practice, especially where there are buildings with multiple occupants. There was also some concern from tenants that service charges could be abused and used as an alternative income stream for landlords.

Landlords, property agents and investors predominantly agreed with the proposal and have voiced general support. Those that disagreed shared the concerns of local authorities that the service charge regimes may be difficult to operate in practice.

**Government Response**

Given the support for the proposal, the government will proceed with having no service charges unless the landlord opts for them. Those that do opt for them will have the choice to reflect the service charges in a superior lease, or to match an existing regime where (for example) the unit is in a parade of shops with a common landlord, or to select from a list of services.

Noting concerns around implementation, the government will ensure that the service charges within the standardised lease are straightforward and easy to understand. The government will also ensure that guidance explains how service charges will work and will be available to local authorities and landlords.

Utilities

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| --- | --- |
| Consultation Question(s) | Responses |
| 31. **Which utilities do you think the landlord should be obliged to supply?*** Water
* Energy – Gas (if present)
* Energy – Electricity
* Telecommunications
* All of the above
* None of the above
 | **124** |

**Summary of Responses**

In the consultation, the government asked what utilities the landlord should be obliged to supply. There was a mix of responses, with around half of respondents thinking that the landlord should supply all listed utilities. Amongst those not selecting all the above, there was strong support across stakeholder groups for the individual options of water, gas and electricity. There was little support for the provision of telecommunications.

**Government Response**

The supply of gas, electricity and water are crucial to the proper functioning of a commercial premises. It is proportionate and realistic for these to be provided, so that a tenant can have full confidence they will be able to trade as intended within the premises. As the responses indicate that this is not disputed amongst respondents, the government have determined that, within the High Street Rental Auction process, the landlord must ensure that gas (if present), electricity, and water are supplied.

Whilst many respondents selected all the above utilities, the government noted that a number disagreed with the need to provide telecommunications to tenants. Given how simple it is to procure internet, the government believes that tenants can secure this themselves with little inconvenience. The government understands that there may be some rare instances where landlords could refuse an internet connection to hold power over the tenant or frustrate the process. This is why the government will also ensure that appropriate protection is afforded to tenants. The lease will require the landlord to be reasonable when considering tenant alterations to premises, which could include internet connections.

## Minimum Energy Efficiency Standards

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| --- | --- |
| Consultation Question(s) | Responses |
| 32. **Do you agree this is a proportionate and sensible measure?*** Scale from Strongly agree to strongly disagree
* Please provide your reasoning [Free-text box]
 | **124** |

**Summary of Responses**

To reduce costs placed upon the landlord and ensure that the policy strikes a proportionate balance between the governments aims to empower local authorities to combat the damaging effects of vacancy and the interests of landlords and investors in property; the government proposed that where properties were leased under the High Street Rental Auction policy landlords would not be required to comply with the current legal obligation for properties to have an Energy Performance Certificate of level E and (proposed) future requirements for levels C and B.

There was a significant divide between agreement and disagreement that the proposed exemption from Minimum Energy Efficiency Standards is a sensible and proportionate measure.

Most groups of respondents narrowly expressed support for the proposal although not without some concern. In the main, respondents were concerned that the policy deviates from wider government policy and could lead to perverse use where landlords deliberately await a High Street Rental Auction to avoid costs arising from compliance with Minimum Energy Efficiency Standards.

**Government Response**

Government notes the division shown by respondents and the helpful rationale provided. Whilst the proposal was made with an intention to ease the burdens placed upon on landlords and this remains key to government’s design of the High Street Rental Auction policy, government also recognises the need for its policy to be consistent and to achieve its aims.

Government has undertaken an assessment of the financial burden placed upon landlords to comply with the minimum required current energy efficiency rating and considers the costs are reasonable and proportionate. The policy design for Minimum Energy Efficiency Standards also contains a number of exemptions which further protect landlords from disproportionate expenditure. Given this assessment, and the concerns around avoidance expressed by respondents, no exemption from Minimum Energy Efficiency Standards will be provided for within the High Street Rental Auction policy. Government considers this approach to draw a fair balance between the financial impact on landlords and achieving the government’s policy objectives both in terms of energy efficiency and bringing vacant high street premises back into active use.

Consultation questions for permitted development rights

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| --- | --- |
| Consultation Question(s) | Responses |
| 33. **Do you agree that a new Permitted Development Right should be introduced that would permit the change from the existing use of a high-street premises to a suitable high-street use as determined by the local authority for the period of lease?*** Yes
* No
* Don’t know/Not sure
* (Optional) Please explain your answer
 | **124** |
| 34. **As only uses suitable for the high street can be introduced, do you agree that this Permitted Development Right should not be subject to prior approval by the local authority?*** Yes
* No
* Don’t know/Not sure
* (Optional) Please explain your answer
 | **124** |
| 35. **To align with the scope of high-street rental auctions, it is proposed that the Permitted Development Right will not have a size limit on premises, exclude listed buildings or premises in Article 2(3) land. Do you agree?*** Yes
* No
* Don’t know/Not sure
* (Optional) Please explain your answer
 | **124** |

**Summary of Responses**

Respondents were divided in their support for the use of permitted development rights. Approximately two out of three local authorities supported the measure, as did investors and property agents. Respondents in the hospitality sector were against the measure, whilst landlords were torn. The comments provided by landlords disagreeing with the measure express a desire for relaxation in the planning system as a whole, rather than a specific concern about this proposal.

Local authorities and other respondents expressed a desire for some limitations, particularly around the planning use changes and flexibilities proposed to facilitate the High Street Rental Auction policy. Respondents from the hospitality sector expressed concerns that the permitted development right could allow landlords to circumvent protections under the planning system and convert pubs to residential properties.

There was also division over whether the permitted development right should be subject to any prior approvals. Landlords felt that this would only serve to delay the process - although most other groups, including local authorities themselves, felt the protective role of local authorities should not be diminished.

With the exception of respondents representing the hospitality sector, who do not wish to see pubs included in this permitted development right, all groups of respondents strongly supported the permitted development right not having a size limit on premises or excluding listed buildings or premises in Article 2(3) land (which includes conservation areas, National Parks and World Heritage Sites). A number of respondents, including those in agreement suggested the government further consider the exclusion of listed buildings and Article 2(3) land.

**Government Response**

Whilst most respondent groups support the use of the permitted development right, the government recognises that this area is one of division amongst respondents. The permitted development right provides a tool to support the High Street Rental Auction policy; applying to qualifying high-street uses and providing for the change of use that the local authority determines is suitable. It serves to ensure bidders are free from the difficulty of knowing whether a planning application for change of use will be successful. It also prevents the local authority needing to deal with applications from all prospective tenants or a tenant having entered a lease whilst still requiring consent for change of use.

Elsewhere in this consultation, local authorities have raised concerns about the burden placed upon them. The local authority will be considering and setting the suitable use and may, as part of this process, have considered community views, noise, odour and other matters of planning. It would be duplicative and burdensome for them to have to replicate this process through a planning application or through consideration of prior approval under the permitted development right. The local authority will set the uses for which bids will be permitted, with the permitted development right providing the tool to grant the permission. For example, if the local authority is of the view that a vacant pub should stay a pub, they are fully empowered to limit an auction to only prospective pub businesses.

In the same way, the local authority can consider which buildings, and which locations, may benefit from the High Street Rental Auction process. They can therefore take a view on whether it should apply to a listed building or to a building in article 2(3) land, and therefore it is not necessary to duplicate this consideration in the right itself. The permitted development right does not permit any physical works that would amount to development, unless other permitted development rights apply (N.B. works affecting only the interior do not require permission).

Separate from planning permission, listed building consent will be required for any internal or external works affecting the character of a listed building.

Local Consideration through Prior Approval

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| --- | --- |
| Consultation Question(s) | Responses |
| 36. **Where Permitted Development Rights enable the continued and permanent use of that premises, for the lease use, do you agree that it is subject to prior approval by the local authority enabling consideration of whether the continued use of the premises would have an adverse impact on the area?*** Yes
* No
* Don’t know/Not sure
* (Optional) Please explain your answer
 | **124** |

**Summary of Responses**

Government proposed the use of a further permitted development right which would provide for the permanent change of use following the period of the lease. This right would be subject to prior approval.

There was significant support for prior approval with landlords the only group not in favour and only marginally so. Those disagreeing generally felt the process should be permanent in the first instance and, therefore, not require prior approval.

**Government Response**

When considering the responses to this question, the government has also given consideration to concerns from the hospitality sector around the landlord using this measure to circumvent planning protections, raised in response to the previous questions. The government will therefore not be continuing with the further permitted development right that would have provided for the permanent change of use following the period of the lease. Without obtaining separate planning permission, the use will revert at the end of the lease meaning the same level of protection applies regarding redevelopment to residential premises. This position takes account of views that planning scrutiny should not be circumvented.

Tenants who agree a new lease with the landlord will need to make a planning application for change of use ahead of the expiry of their High Street Rental Auction lease. The government will include advice in the guidance document to minimise the complexity of this step for landlord, tenant and local authority. This change of process may be beneficial to local authorities who can consider any issue created by the business (if any exist) before committing to allow a permanent change of use through a planning application.

### Prior Approval Application Fee

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| --- | --- |
| Consultation Question(s) | Responses |
| 37. **If introduced, do you agree that a fee of £96 (current figure) should be charged for a prior approval application for the permanent change of use?*** Yes
* No
* Don’t know/Not sure
* (Optional) Please explain your answer
 | **124** |

**Summary of Responses**

Generally, respondents agreed that a fee of £96 should be introduced for prior approval applications resulting from a high street rental auction. Some landlords felt that there should be no cost whilst some local authorities noted the cost does not cover the process.

**Government Response**

As set out in response to the earlier question on a further permitted development right that would have provided for the permanent change of use following the period of the lease, the government does not propose to proceed with the further permitted development right. This position takes account of views that planning scrutiny should not be circumvented. This position negates the need for prior approval applications and therefore a prior approval planning application fee.

### Public Sector Equality Duty and Impact Assessment – Sealed Bid Auction Process

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| --- | --- |
| Consultation Question(s) | Responses |
| 38. **Do you believe the sealed-bid process outlined in Annex C may give rise to disproportionate impacts on groups with protected characteristics?*** Yes
* No
* Don’t know
* [If yes] Please explain your answer
 | **124** |

**Summary of Responses**

Very few respondents felt the sealed bid auction process was likely to create disproportionate impacts. A very small number of local authorities felt that this type of auction could bias the auction away from community groups who would bring desirable social outcomes.

**Government Response**

The government is pleased that, in general, respondents agree that the sealed bid auction process is unlikely to have a disproportionate impact. In putting forward the sealed bid auction process, the government considered alternatives such as those listed in Annex C of the consultation document and is satisfied that the proposed process stands the best chance of allowing bids from a diverse range of prospective tenants, whilst ensuring that competitive bids representing fair value to the landlord will be made. The government recognises local authorities' preference to encourage bids from community groups, but a balance must remain between this preference and the landlords’ financial interests.

### Public Sector Equality Duty and Impact Assessment – Agreement for lease and standardised lease

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| --- | --- |
| Consultation Question(s) | Responses |
| 39. **Do you think that the proposed clauses within the agreement for lease and standardised lease for a High Street Rental Auction could give rise to disproportionate impacts on people who share a protected characteristic?*** Yes
* No
* Don’t know
* [If yes] Please explain your answer
 | **124** |

**Summary of Responses**

Very few respondents felt the proposed clauses to be included in the agreement for lease and standardised lease were likely to create disproportionate impacts. Of those disagreeing, the most common theme was around provision of access for people with disabilities.

**Government response**

The government is pleased that most respondents agree that the proposed lease and agreement for lease do not give rise to disproportionate impacts. The government notes the concern raised around disability access; although this is not something which would usually be expressly dealt with in commercial leases, the need for reasonable adjustments may be considered by the parties when it comes to alterations to the premises.

### Public Sector Equality Duty and Impact Assessment – Initial Permitted Development Right

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| --- | --- |
| Consultation Question(s) | Responses |
| 40. **Do you think that any of the proposed changes in relation to a new Permitted Development Right for a High Street Rental Auction could impact on: a) businesses b) local planning authorities c) communities?*** Yes
* No
* Don’t know
* [If yes] Please explain your answer
 | **124** |
| 41. **Do you think that proposed changes in relation to a new Permitted Development Right for a High Street Rental Auction could give rise to disproportionate impacts on people who share a protected characteristic?*** Yes
* No
* Don’t know
* [If yes] Please explain your answer
 | **124** |

**Summary of Responses**

Across all groups, most respondents felt that the proposed permitted development right would affect businesses, local planning authorities and communities. There were mixed views as to whether the impact would be net positive or negative, with some stakeholders arguing flexibility would help the high street to thrive, but local authorities were concerned this could allow deviation from the town plan. Respondents from the hospitality sector were also concerned that permitted development could lead to the loss of pubs.

Very few respondents felt the proposed permitted development right would have a disproportionate impact upon people with protected characteristics.

**Government response**

The government is pleased that respondents agree this proposal will not impact upon people with protected characteristics. The government recognises that the policy will affect all high street stakeholders, however the government has attempted to ensure that such an impact is in line with the aims of the policy and proportionate.

In regard to concerns that the permitted development right may allow deviation from the town plan, this is not the case. The local authority will determine which properties are subject to a High Street Rental Auction and set the types of use it is willing to allow; as such it will be able to limit non-desirable use types under the permitted development right in the same way it could under a planning application. Equally, if a local authority is of the view that a pub should stay a pub it can ensure this is the case under its own autonomy.

### Public Sector Equality Duty and Impact Assessment – Further Permitted Development Right

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| --- | --- |
| Consultation Question(s) | Responses |
| 42. **Do you think that any of the proposed changes in relation to a new Permitted Development Right to provide additional flexibility following the end of the High Street Rental Auction period could impact on: a) businesses b) local planning authorities c) communities?*** Yes
* No
* Don’t know
* [If yes] Please explain your answer
 | **124** |
| 43. **Do you think that proposed changes in relation to a new Permitted Development Right to provide additional flexibility following the end of the High Street Rental Auction period could give rise to any impacts on people who share a protected characteristic?*** Yes
* No
* Don’t know
* [If yes] Please explain your answer
 | **124** |

**Summary of Responses**

Respondents were divided over whether a further permitted development right providing a permanent change of use following the end of a High Street Rental Auction lease would affect businesses, local authorities, or communities.

Of those who felt the policy would have an impact, some raised that it would have a positive impact upon businesses, whilst most felt there would be an impact on local authorities in terms of workload. As with the previous permitted development right some respondents raised concerns about deviation from local plans and lack of scrutiny.

Very few respondents felt the proposed permitted development right would have a disproportionate impact upon people with protected characteristics.

**Government response**

The government is pleased that respondents agree this proposal will not impact upon people with protected characteristics.

Far from placing further burdens on local authorities, permitted development rights seek to remove the burden of application and consideration from local authorities and tenants. As detailed in our response above, local authorities can set the permissible uses under the auction and as such limit undesirable uses.

As detailed under the government's response to the consultation questions for permitted development rights, the government has considered representation from stakeholders in respect of the need to ensure planning scrutiny is not diminished, and the potential for adverse impacts on the hospitality sector; as such, the government will not include this permitted development right within the policy.

### Safeguards for landlords

|  |  |
| --- | --- |
| Consultation Question(s) | Responses |
| 44. **Do you consider there should be any other safeguards for landlords in the process?** | **82** |
| 45. [If Yes] **Please give further details of what additional safeguards could be added into the process.** | **33** |

**Summary of Responses**

The majority of respondents did not think that further safeguards were needed, however a small proportion of each group did recommend further safeguards. Landlords, investors, and property agents felt that further safeguards were needed, particularly the ability to screen tenants to prevent them taking on large degrees of risk. Some recommend that there must be guarantees from the local authority to ensure that the landlord does not lose money from this process.

**Government Response**

In the design of this policy, the government has extensively engaged with stakeholders including landlords, investors and property agents and attempted to account for their views as far as possible whilst ensuring the policy aims are still met.

Whilst the government acknowledges the concerns expressed by landlords around choice of tenant and potential loss incurred, the properties in scope of this policy will have been vacant for a year or cumulatively for more than a year over a two-year period. The landlord will also have had a further grace period in which to rent the property to a tenant of their choosing.

In addition to the safeguards proposed at consultation the government will also be providing for the landlord, where engaged, to have full choice over the successful bidder from those eligible. This will help landlords to screen tenants as per the comments received.

# Following the Consultation Response

The government would like to provide its thanks to those stakeholders and members of the public who have engaged with the design of this policy, both through their responses to the consultation and in other instances through verbal or written engagement.

The views given, data supplied, and expertise provided have all been important factors in the design of this power, which aims to help local authorities combat the damaging and detrimental effects of long-term vacancy which can cause local residents to become disconnected from and disenchanted with their high streets.

Over the coming months government will, in line with the information provided in this response, work with stakeholders to design and develop secondary legislation via statutory instruments. This legislation will finalise the design of this power and bring it into effect so that local authorities may begin to use it. We anticipate this legislation coming in to force in mid-2024.

Prior to the legislation coming into force government will release detailed guidance to help stakeholders navigate the policy, government will also undertake a number of introductory events both in person and online to explain and help stakeholders understand the policy.